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COMMISSION ON HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 28th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 27 March 1997, at 10 a.m.

Chairman: Mr. SOMOL (Czech Republic)

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The meeting was called to order at 10.15 a.m.

STATEMENT BY MR. RENE BLATTMANN, MINISTER OF JUSTICE OF BOLIVIA

1. Mr. BLATTMANN (Bolivia) said that since 1995, when Bolivia had submitted its second periodic report on the implementation of the International Covenant on Civil and Political Rights, his country had made great progress in that area. The constitutional reform implemented in 1994 by President Gonzálo Sánchez de Lozada had reflected a desire to ensure the democratization of the country and to strengthen the rule of law. The new Ministry of Justice was responsible for proposing legislative reforms, curbing corruption and impunity and, above all, monitoring respect for, and promotion of, human rights. It was supported in its task by the Human Rights Department within the Ministry with special responsibilities for promoting respect for the fundamental rights of the individual, the administration of the national programme of public defence and the pilot programme for the establishment of human rights advocacy offices.

2. The history of Bolivia had, until very recently, been marked by frequent violations of human rights, which were the result of a continuing discrepancy between the principles embodied in the Constitution and their actual implementation, particularly in the area of the administration of justice, where protracted delays had led to intolerable situations for litigants and had completely undermined the people's confidence in the judiciary.

3. Judicial reform, undertaken in 1994, had been successful in eliminating two evils: firstly, the increasing incidence of unduly prolonged preventive detention attributable to delays in pre-trial proceedings and completely contrary to the Standard Minimum Rules for the Treatment of Prisoners and, secondly, the practice of civil imprisonment as a result of which the State assumed the role of a debt-collector. Civil imprisonment had been abolished, despite opposition by certain pressure groups, by the Act of 15 December 1994, which had improved overcrowded prison conditions through the release of a large number of persons sentenced to life imprisonment for purely economic offences.

4. A further attempt at making the penal system more humane had led to the adoption, in December 1995, of an Act on the treatment of juvenile or elderly detainees, ensuring that their treatment was commensurate with their age without losing sight of the need to maintain security and public order.

5. The Act on Domestic Violence, adopted in December 1995, was in conformity with the Convention on the Elimination of All Forms of Discrimination against Women, which had been ratified by the National Congress in 1989. Furthermore, in connection with the recognition of women's rights to equality between the sexes, under the Electoral Reform Act of 19 March 1997 political parties were required to ensure that at least 30 per cent of candidates in legislative elections were women.

6. Respect for due process and equality of all persons before the law had been strengthened by the Act of 2 February 1996 on Recognizance, which reaffirmed the principle of the presumption of innocence and prevented the

prolonged detention of persons who had not been convicted. The application of the Act had led to the release of 1,700 prisoners, namely, 30 per cent of the prison population.

7. Such institutional and legislative reforms had gone hand in hand with the establishment of machinery for the implementation of their underlying principles. The free legal aid programme was one such mechanism aimed at ensuring, in practice, respect for constitutional rights and guarantees. Under that programme, motivated young lawyers were assigned by the State to persons who could not afford proper legal defence before the courts. The programme, under which 48,000 cases had already been handled, resulting in the release of 27,000 persons since 1994, had become increasingly popular, even in the Chaparé zone, which was regrettably infamous for illicit trafficking in cocaine and associated with the commission of various human rights abuses. In December 1995 a human rights office had been set up in the region to protect and promote respect for the fundamental rights of the inhabitants in view of the anti-drug trafficking activities of the security forces. The office was run by a doctor, assisted by a lawyer, and had processed 2,000 various complaints of violations and abuse. Other offices had been set up in the rural areas where the indigenous population lived in conditions of servitude.

8. The measures taken to promote the enjoyment of fundamental human rights included a mother and child protection programme under which free health care was provided to pregnant women and to infants at public and private hospitals, a national assistance programme for the elderly under which retirement pension funds were to be strengthened, and a comprehensive programme of educational reform, based on non-discrimination between the sexes and development of local languages and cultures. With regard to the last point, which concerned the rights of indigenous peoples, he noted that article 17 of the former Penal Code under which the Indian population of the forest areas was deemed to lack legal capacity, had been amended. The new Code of Criminal Procedure under consideration was intended to ensure greater respect for the specific features of indigenous peoples, whose customs in criminal matters should be taken into account. The draft was based on the idea that constitutional guarantees and fundamental rights must always serve as a basis for any interpretation. It established indictment procedures and oral and public judgement, which implied a collegial justice administration body and instituted the jury function.

9. The constitutionality of all those innovations was guaranteed by the Constitutional Court. Draft legislation on the functions of the Ombudsman was awaiting consideration by the National Congress.

10. The draft act on the Council of Justice was designed to modernize the administration of justice and relieve the judiciary of administrative tasks. It established a system of sanctions and provided for the training of judges.

11. Bolivia was still plagued by poverty, underdevelopment, unemployment and many other difficulties which impeded the effective enjoyment of human rights, but its leaders were determined to replace the "law of force" by the force of law.

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(agenda item 8) (continued) (E/CN.4/1997/4 and Add.1, 2 and Corr.1 and Add.3, 7 and Add.1-3 and Corr.1, 25 and Add.1, 26, 27 and Add.1, 28, 29 and Add.1, 30, 31 and Add.1, 32 and 34, 55 and Corr.1, 103 and 104; E/CN.4/1997/NGO/3, 4, 7, 8, 20, 22, 23 and 29; E/CN.4/Sub.2/1996/16, 17, 19 and Corr.1 and Add.1; A/51/465 and 561)

12. Mr. BUI QUANG MINH (Observer for Viet Nam), speaking in exercise of the right of reply, said it was deplorable that once again overseas Vietnamese, hiding under the cover of Pax Romana and the so-called "Viet Nam Committee on Human Rights", were submitting to the Commission unfounded allegations about what was happening in Viet Nam. It was unfortunate that, 22 years after the end of the war, those overseas Vietnamese were still expressing their bitterness. Although their allegations were unconvincing, they had to be corrected in the interest of the truth.

13. Viet Nam had a long tradition of humanitarianism, and he explained that Vietnam's penitentiary policy was intended to make prisoners aware of the errors they had made and to promote their reintegration in society. Under the Decree on the execution of prison sentences and the Rules on the Administration of Detention Camps, both issued in 1993, prisoners serving their sentences were guaranteed the right to life and to be free from any form of torture or mistreatment. Prisoners were provided with medical care and education and could take part in cultural activities. They were also allowed visits by relatives. Any violation of those legitimate rights of prisoners was severely punished.

14. Hundreds of thousands of businessmen, millions of tourists and many foreign delegations, including the team headed by Mr. Joinet, Chairman of the Working Group on Arbitrary Detention, had been able to see for themselves the true situation in the country. Viet Nam had been engaged in a process of renovation for the previous 11 years. Year by year, the living conditions of the Vietnamese people were improving and they were enjoying broader and broader democratic freedoms. It was high time that the few hostile overseas Vietnamese should join their countrymen in building and developing their homeland.

15. Mr. AL-MUSIBLI (Observer for Yemen), speaking in exercise of the right of reply, said that the allegations made by a representative of War Resisters' International had their origin in secessionist elements who did not want to admit that Yemen was now a united country, proceeding resolutely along the path towards democracy. The human rights violations to which that representative had referred dated back to 1994. At the present time the united country was working towards peace, stability and national reconciliation.

16. In 1996, the United Nations Secretary-General, when visiting Yemen, had commended the democratic evolution of the regime. The Constitution protected human rights and in particular the right to freedom of opinion and expression and the right to appeal against a court decision. There were at present about 15 political parties, and democratic legislative elections would be held on 27 April. War Resisters' International should refrain from speaking with the voice of those who wished to foster war and confirm the truth of allegations before propounding them.

17. Mr. TOSEVSKI (Member of the Board of Trustees, United Nations Voluntary Fund for Victims of Torture) said that information about the Fund was available in the Secretary-General's report to the General Assembly (A/51/465) and in the updated report submitted to the Commission (E/CN.4/1997/27/Add.1). He recalled that, according to various conventions of the United Nations, the Council of Europe, the Organization of American States, the International Labour Organization and the International Committee of the Red Cross, the prohibition of torture was a right that must be protected under all circumstances. That prohibition had been reaffirmed in 1993 by the World Conference on Human Rights.

18. The Voluntary Fund had been established in 1981. In 1996, the United Nations High Commissioner for Human Rights had approved the recommendations of the Board of Trustees concerning grants to 96 projects submitted by 92 humanitarian organizations in 54 countries for a total amount of US$ 2,435,500. However, as total requests for funding had amounted to over US$ 5 million, the Fund had been able to finance only 50 per cent of them. In 1997, the Fund had received 138 project proposals - an increase of almost 40 per cent compared to 1996. The total amount requested in 1997 was US$ 6,285,166, although real project-related needs amounted to US$ 25 million.

19. Pursuant to Commission resolution 1996/33, the High Commissioner for Human Rights had, in a letter of 11 November 1996, requested all Member States to contribute to the Fund before the meeting of the Fund's Board of Trustees. Since the publication of document E/CN.4/1997/27/Add.1, the Governments of Algeria, Andorra, Canada, Cyprus, Denmark, Finland, Iceland, Malta, Nepal, Norway, the Philippines and Switzerland had made contributions. The contributions made to the Fund by 23 Governments and 2 individuals now amounted to US$ 1,561,581. Pledges had also been made for a total amount of US$ 1,825,400 by the Governments of Austria, Chile, Germany, Greece, the Holy See, Japan, Liechtenstein, Luxembourg, Monaco, the Republic of Korea and the United States. However, all those pledges and new contributions had to be paid before 10 May 1997 if the Board of Trustees was to be able to take them into account at its next session from 20 to 30 May 1997. It would hold an information meeting with interested donors on the last day of the session.

20. Mr. HUSSAIN (Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression), submitting his report (E/CN.4/1997/31), highlighted a number of encouraging developments. He welcomed the current trend in defence of the right to freedom of opinion and expression, which was reflected primarily in growing moral indignation towards perpetrators of human rights violations. He also welcomed the increasing cooperation between Governments, in terms of both communication of information and invitations received.

21. Nonetheless, the right to freedom of opinion and expression continued frequently to come under attack. The annual report of the Committee to Protect Journalists reported that, in 1996, 185 journalists had been imprisoned in 24 countries, and 27 journalists killed while pursuing their profession. Thousands of attempts had been made to silence journalists and news organizations by imprisonment, censorship, legal harassment and physical assault.

22. The large number of cases received during the previous year clearly indicated that Governments continued to place exaggerated and undue emphasis on permissible restrictions on the right to freedom of opinion and expression. It was of the utmost importance that States should strike the right balance between their need and their right to protect their legitimate national interests, on the one hand, and their obligation to protect the right to freedom of opinion and expression, on the other. He urged all Governments to review not only laws specifically intended to protect national security, but also ordinary criminal laws which might be used to infringe the rights to freedom of opinion and expression and information. All bodies responsible for ensuring that the law was enforced, and the police in particular, also had a role to play in promoting such rights.

23. Some violations originated in biased and differing interpretations of religious beliefs. States should take every precaution to ensure that considerations of beliefs did not come in the way of meeting their obligations with regard to the right to freedom of opinion and expression.

24. The promotion and protection of women's right to freedom of opinion and expression warranted particular attention. All too often, States invoked custom, tradition or religion to prevent society from evolving and to obstruct the emergence of women as a new factor in the public arena. He called upon States and all citizens actively to support women who sought to make their voices heard, and to guarantee their participation in public life. Efforts should be made to take advantage of the wealth of knowledge and resourcefulness of women, for instance by expanding their participation in conflict-prevention and peace-making efforts. The media should foster the development of new attitudes towards greater participation by women in public life.

25. The role of the media in internal and international conflicts also merited particular attention. In certain cases the media had been used to incite racial hatred. It was all too frequently forgotten that the press

could promote peace, in that it could change perceptions about the "other", dissipate prejudices, raise public awareness regarding issues of human rights and, thus, forestall violence.

26. The right to freedom of opinion, of expression and of information was likewise important in the realization of the right to development. The right to freedom of opinion and expression had been recognized as an essential component in the process of ensuring popular participation, without which the realization of the right to development, as a prerogative of people rather than of States, would remain in jeopardy. Future discussions on the right to development should therefore take full account of the need for all Governments fully to promote and protect the right to freedom of opinion and expression.

27. It would be difficult to accomplish all the activities envisaged by his mandate until the problem of the limited resources placed at his disposal, which continued to cause concern, had been resolved. He warmly thanked the non-governmental organizations (NGOs) for their support and for their activities in defending the right to freedom of opinion and expression around the world and, in particular, Article 19; the International Centre Against Censorship; International P.E.N.; the Committee to Protect Journalists; the International Freedom of Expression Clearing House; Amnesty International and Human Rights Watch.

28. Country visits and their follow-up were extremely important. He was grateful to the Turkish Government for the open and constructive exchange of views that had taken place during his visit to that country in September 1996, as reported in E/CN.4/1997/31/Add.1. He was preparing to visit Poland and Belarus in May. He hoped that his visit to Sudan would take place shortly, following its postponement the previous year for organizational reasons. He urged the international community as a whole, including Governments, civil society and international organizations, to persevere in efforts to build a pluralistic institutional structure conducive to the exercise of the right of freedom of opinion and expression in all countries.

29. Mr. BEBARS (Egypt) stated that the administration of justice and the treatment of prisoners were good gauges of the extent to which Governments enabled their population effectively to enjoy not only civil and political rights but also economic, social and cultural rights, and how far they respected the principle of the rule of law.

30. Numerous reports on that subject were submitted every year to the Commission on Human Rights, by both special rapporteurs and by working groups, and in addition there were statements by NGOs and responses and comments by Governments. The resulting workload was very heavy for all the parties involved, including the secretariat of the Centre for Human Rights, which was required to assume a greater burden with limited resources.

31. His delegation considered that such tasks should be rationalized, and submitted four proposals to that end: firstly, any duplication should be eliminated between the work of the special rapporteurs and that of the treaty bodies, particularly regarding monitoring of implementation of international instruments; secondly, the competence of various special rapporteurs and working groups should be clearly defined, as should the rules of procedure

applicable to each one; thirdly, questions addressed to Governments should conform to clear criteria, thereby simplifying the task of countries and making it possible to obtain more specific responses to each case or allegation. Finally, the possibility should be studied of having an integrated questionnaire drawn up by special rapporteurs and working groups on all matters relating to the administration of justice. The replies of States to the questionnaire would constitute a framework of reference for determining exactly how they stand in that connection.

32. A more rigorous approach of that nature would not only facilitate the task of monitoring bodies by enabling them to carry out their work in reasonable time with greater transparency and neutrality, but also help to improve dialogue with Governments, whose situation would be assessed in a more integrated and objective manner and would therefore feel that they were all being treated on an equal footing.

33. His delegation also attached great importance to human rights education. The Centre for Human Rights should take effective action in that sphere, concentrating particularly on those responsible for the administration of justice. The training programme for future police officers recently carried out in Egypt, in cooperation with the Centre, was one example. Egypt had also organized seminars for public prosecutors and judges financed by centres engaging in research on the subject. NGOs could also make an effective contribution by organizing human rights information seminars.

34. On the eve of the fiftieth anniversary of the Universal Declaration of Human Rights, everything possible should be done to ensure that such rights were respected. That meant strengthening monitoring and education activities, as well as increasing the awareness of States, which were ultimately responsible for the administration of justice and should be encouraged to cooperate on the laws of respect for their national legislation and their culture.

35. Mrs. REGAZZOLI (Argentina) congratulated the Special Rapporteur on torture for his very comprehensive report on the subject. She warmly welcomed his recommendation that solitary confinement should be prohibited. The list of countries he had examined was certainly impressive and showed that, almost half a century after the adoption of the Universal Declaration of Human Rights, and notwithstanding astounding technological progress, the shameful practice of torture continued, even in countries which considered themselves to be among the most civilized.

36. In the face of that setback, the international community should mobilize and the Commission on Human Rights, in particular, redouble its efforts to achieve universal ratification and strict implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Argentina had, since 1986, been a party to the Convention which had constitutional status and was therefore binding at the international and national levels.

37. Argentina had also been involved in the drafting and adoption of the Inter-American Convention for the Prevention and Punishment of Torture.

38. The unsolved cases of persons who had disappeared during the military dictatorship, referred to in the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1997/34), were among Argentina's priority concerns and a special body had been appointed to gather information regarding their possible whereabouts. In addition, a bill had been introduced to establish a bicameral commission to investigate the fate of individuals who had disappeared. Argentina had also adopted a reparation policy and of compensation for the victims of the military dictatorship or their families. Some US$ 550 million had already been disbursed for that purpose.

39. Although the role of NGOs had been criticized, she highlighted the importance of their contribution, and noted that dialogue with them would undoubtedly consolidate the democratic system.

40. Implementation of human rights instruments would help to ensure complete respect for human rights, as well as the elimination of torture and the practice of enforced and involuntary disappearances. Finally, she alluded to an idea submitted by Mrs. Quisumbing, Chairman of the Commission's forty-sixth session, to the effect that the Commission should persevere in its endeavours until every last hour of unjust imprisonment, every last second of torture, the smallest act of violence had been eliminated. That was a goal which justified the Commission's existence.

41. Mr. SOLINAS (Chile) emphasized the importance of the right to restitution, compensation and rehabilitation for victims of human rights violations. Reparation would never undo a wrong but it could attenuate the damage and pain it had caused. That right was beginning to acquire concrete form through the endeavours of a number of States, including Chile, where large segments of civil society, victims and their families had participated in the action taken by the authorities, and the efforts of the Commission's former Special Rapporteur, Mr. van Boven, whose basic principles on the subject were presented in document E/CN.4/1997/104.

42. The support of the international community was of vital importance to States determined to protect the dignity and rights of the individual. For that reason, Chile duly appreciated collaboration with Special Rapporteurs and experts. It staunchly supported the action of the Special Rapporteur on the question of torture, Mr. Rodley, and endeavoured to follow the recommendations he had drafted following his visit to the country, particularly in establishing the necessary machinery for effectively preventing torture and other cruel, inhuman or degrading treatment or punishment. It was therefore to be hoped that the working group responsible for elaborating the draft optional protocol to the Convention against Torture would complete its work successfully.

43. He was persuaded that human rights could be truly exercised only in a democracy, in a State subject to the rule of law, where freedom of the individual, which was essential to the exercise of other rights, was best protected. He drew the Commission's attention to the important work being done by the Working Group on arbitrary detention in accordance with the criteria that he himself had drawn up and the guidelines laid down by the Commission.

44. In submitting its report (E/CN.4/1997/34), which was of direct concern to Chile, the Working Group on Enforced or Involuntary Disappearances had singled Chile out as one of the countries of particular concern to it because over 500 cases had been pending there for over 10 years. Chile shared the Working Group's concern about that situation and was endeavouring to ascertain the fate of victims of enforced disappearances which - he emphasized - had occurred at a time when the country was under a military dictatorship and when serious human rights violations had been perpetrated. The Working Group was aware of that fact and had, moreover, acknowledged that the Chilean Government had always been cooperative. Investigations to ascertain the fate of victims and evaluate reparations were being pursued and intensified, in line with its recommendations. It might also have mentioned the cooperation it had consistently enjoyed - and would continue to enjoy - with the democratic governments of Chile.

45. Chile would continue the political and legal reforms it had initiated to bring its institutions into line with the standards embodied in the international human rights instruments to which it was a party. In that connection, he emphasized the importance of cooperation with international machinery for the promotion and protection of human rights at the universal, indivisible and interdependent level, as had been recognized during the World Conference on Human Rights.

46. Mr. MENESES (Ecuador), referring to the draft optional protocol to the Convention against Torture, said that the international community must be encouraged to formulate, in the light of the wording adopted in other international and regional instruments, provisions in such a manner that the subcommittee of experts envisaged constituted a flexible and pragmatic mechanism, whose competence to visit places of detention under the jurisdiction of States was accepted expressly upon ratification of the new instrument. Ecuador wished to emphasize once again that the subcommittee's visits should not be interrupted other than in exceptional circumstances or when a state of emergency was declared.

47. It would be for the signatory States to disseminate the text of the protocol and to train the staff responsible for its implementation.

48. He supported the adoption of a protocol governed by the principles of impartiality, objectivity, transparency, non-selectivity and universality, establishing machinery to safeguard the exercise of all human rights and fundamental freedoms. He observed that the work of the committees and subcommittees would be effective only if States demonstrated their willingness to prevent torture and to rectify behaviour incompatible with respect for human rights and freedoms.

49. Mr. DAI Yuzhong (China) said he welcomed the fact that the international community was cooperating in the fight against the ugly phenomenon of torture, and had adopted the Convention against Torture under which all States parties were required to establish their universal jurisdiction over crimes of torture, to provide for the extradition of the perpetrators of those crimes and to cooperate with one another. Increasingly, extradition and legal assistance treaties between countries were incorporating specific provisions regarding the procedures for such cooperation.

50. International cooperation was also being developed between Member States and United Nations mechanisms such as rapporteurs and working groups, whose research and suggestions could be of great value.

51. Attention must be drawn, however, to the action of certain working groups and rapporteurs who, basing themselves on malicious slander and accusations, had launched wilful attacks on developing countries, disregarding the judicial sovereignty of States and confusing torture and legal punishment. Individuals and entities mandated by the United Nations must prove themselves equal to the expectations of Member States. They must work strictly within their mandates, observing the principles of impartiality, universality, objectivity, transparency and non-selectivity, and avoid being exploited for political ends.

52. His delegation had participated in the deliberations of the Working Group on the draft optional protocol to the Convention against Torture. Some progress had already been made and he hoped that it would continue its efforts until it arrived at a consensus text. It was engaged in groundbreaking and complex work which required careful reflection. Member States must therefore organize thorough consultations, taking into account the concerns of various countries and ensuring that no detail was neglected. They must avoid acting hastily or seeking to impose their views, in the interests of producing an instrument which would be universally accepted.

53. The optional protocol should refer explicitly to the principles set forth in the Charter of the United Nations, particularly the principles of respect for the sovereignty of States and non-interference in the internal affairs of other States, which were the basis of international relations and should also apply in the human rights field. In addition, the subcommittee must obtain the consent of the States concerned before undertaking any visits, which must be conducted in conformity with the laws of those States. They should be able to express their views, since the prohibition and prevention of torture were their responsibility. The aim of visits was to enhance cooperation, not to provoke confrontation, or, worse still, to put a State party on trial.

54. China, which had been one of the first States to accede to the Convention against Torture, complied fully with its obligations and had made progress over the previous decade in terms of its legislation, judicial system and administration. In 1996, important amendments had been made to the Code of Criminal Procedure and the National People's Congress had just adopted a comprehensive revision of the Criminal Code. Those measures were aimed at achieving modern criminal legislation and protecting the legitimate rights of citizens, particularly the right not to be tortured. China was aware, however, that much remained to be done and was determined to continue its efforts and to implement the Convention.

55. Mr. PARREIRA (Angola) took issue with the information given in paragraphs 47 to 50 of the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1997/34). The mandate of the Working Group was to act as a channel of communication between families of the disappeared persons and the Governments concerned, with a view to ensuring that sufficiently documented and clearly identified individual cases were

investigated and to ascertain whether such information fell under its mandate and contained the required elements. However, in the case of the four alleged enforced or involuntary disappearances, dating from 1977, no complaint had been lodged through legal channels, nor had any inquiry been requested, which meant that domestic remedies had never been used. Moreover, by requesting the assistance of the Secretary-General's Special Representative on the situation of human rights in Angola with respect to those "cases", the Working Group had gravely infringed upon the sovereignty of a Member State; the Special Representative had not, in fact, responded to that request.

56. The Working Group and other United Nations human rights bodies were aware of Angola's efforts to engage in dialogue and cooperation. The Working Group itself recognized that his Government acted with absolute transparency since it had closed other cases also dating from 1977. Furthermore, no new cases of disappearances had been brought to its attention. Given that all the necessary legal safeguards were now in place in Angola to prevent the recurrence of such cases, he asked the Working Group to consider closing the remaining cases dating from 1977.

57. Mr. SUAREZ FIGUEROA (Observer for Venezuela) described the situation obtaining in his country during the visit of the Special Rapporteur on the question of torture. The early 1980s had marked the beginning of a period of economic stagnation and Venezuela, which had not escaped the debt crisis afflicting the whole of Latin America, had been forced to reduce the sums allocated for social projects and infrastructural development. As a result, poverty had become widespread, leading to an increase in the number of marginalized persons and a rise in urban crime, which the State institutions and legal machinery had been unable to contain. The situation had worsened in the early 1990s: a macro-economic adjustment programme had failed at high social cost, there had been two attempted coups d'état, the national banking system had collapsed, and political and legal institutions had been virtually paralysed. When the Special Rapporteur visited Venezuela in 1996, the political and economic situation had improved, following the inauguration of President Caldera in February 1994, but the weakness of the institutional structure left open the risk of human rights violations.

58. It was clear from Mr. Rodley's report (E/CN.4/1997/7) that the functioning of legal machinery, the treatment of detainees, the protection of human rights by the law and the prison system in general left much to be desired. It was also apparent that the Venezuelan Government was fully aware of those weaknesses and was determined to overcome them. The frank tone of the Special Rapporteur's interviews with State employees and their capacity for self-criticism, the complete freedom of movement which he had enjoyed, the recognition of the necessity of emerging from the extraordinary economic and institutional crisis which the country was experiencing, and the Government's willingness to cooperate in order to resolve the human rights problems raised by the Special Rapporteur all testified to that determination and had been noted by him. Legal and legislative reforms were already under way, a programme had been initiated to make prisons more humane and Venezuela was preparing to cooperate with the European Union to modernize its jails. There was every reason to hope that the country would recover, enabling it to accord to the protection of human rights the attention it merited.

59. Mr. EL HASSAN (Observer for Sudan) thanked the Working Group on Enforced or Involuntary Disappearances for the interest it had shown in the situation in his country. His Government had cooperated fully with the Working Group, as was indicated in paragraph 336 of its report (E/CN.4/1997/34). Special fact-finding committees had been set up to look into the disappearances which had been brought to the Government's attention, but their work had been hampered, firstly, by transport and communication problems and by the conflict raging in the south of the country and, secondly, by the fact that the information received from the Working Group concerning the disappearances was not sufficiently precise, particularly with regard to the identities of the persons referred to in paragraph 334 of the report.

60. With regard to the camps mentioned in paragraph 332, they had been created to facilitate the provision of humanitarian aid to children who had been placed there by the national authorities and by voluntary organizations. His Government was requesting the NGOs, the Red Cross and the Commission for assistance to enable children abducted by rebels in the south to return to their homes.

61. Turning to the question of the use of torture, he stated that the information communicated to the Special Rapporteur on torture, to which he referred in paragraph 185 of his report (E/CN.4/1997/7), was incorrect. The decisions of the National Security Council on detentions and extensions of the period of detention could be overturned by a special committee chaired by two judges, which had been established within the Ministry of Justice. Detainees had the right to protest against any act which violated their human dignity or the rights accorded to them under the 1991 Code of Criminal Procedure.

62. He therefore regretted the approach adopted by the Special Rapporteur, who jumped to hasty conclusions on the basis of vague allegations, without having carried out a proper investigation. He reaffirmed that respect for human dignity and the physical and moral integrity of the individual was the keystone of all laws in force in the Sudan.

63. Mr. GREXA (Observer for Slovakia) said that his delegation associated itself completely with the statement made by the representative of the Netherlands on behalf of the European Union. To combat torture and other cruel, inhuman or degrading treatment or punishment, which, sadly, were today all too present in the world including in the well-established democracies, Slovakia advocated a simple solution, namely that countries should scrupulously respect their Constitution and national laws, as well as their international obligations. However, the eradication of torture and similar practices also required action at the international level.

64. Slovakia noted with satisfaction in that connection that the idea of creating a permanent international criminal tribunal had met with broad consensus within the community of States and that a body of that nature was slowly coming into being. The Preparatory Committee had already made substantial progress, particularly from an analytical standpoint, and must now concentrate on synthesis, namely on preparing a so-called "consolidated" text which would be acceptable to all States, irrespective of their criminal justice system. If the international criminal court became a reality, as his

delegation believed it would, that would be due not only to the efforts of Governments, but also to the outstanding contribution of NGOs to that ambitious project. Admittedly, the creation of an international criminal court would not put an end to torture, since only those cases occurring in the context of a systematic plan or policy of repression against a population would be brought before it. Nevertheless, he welcomed the addition of a new protection mechanism to those already existing in the human rights field.

65. His delegation considered that the universal ratification of international human rights instruments was one of the prerequisites for the respect of those rights. It was therefore a matter of urgency that all States without exception should become parties to the Convention against Torture and that those States which had acceded to it but had made reservations with regard to article 20 should reconsider their position. Slovakia, for its part, had withdrawn that reservation in March 1995. It supported the swift adoption of the draft optional protocol to the Convention. It was therefore logical that it should be one of the sponsors of the draft resolution on torture submitted by the Danish delegation (E/CN.4/1997/L.51).

66. Ms. MACKENZIE (International Federation of Journalists (IFJ)) said that she deplored excessive government control of information, which prevented journalists from freely exercising their profession. IFJ was categorically against any unprofessional journalism, having drawn up a code of ethics to be adopted as an international standard for all journalists. Nevertheless, Governments must not use the excuse of "bad journalism" to harass the independent media. They must recognize the right of journalists to report all events, even if that meant expressing views opposed to those of the authorities. The authorities themselves ought not to apply either direct or indirect censorship, and all anti-defamation laws should be drafted in accordance with the principle that to be defamatory a statement had to be untrue, made with malicious intent and damaging to the reputation. Governments should, moreover, respect the right of journalists, as of other citizens, not to be arbitrarily detained, and their rights to physical integrity, a fair trial and freedom of association; and they should not actively or passively condone physical attacks against journalists.

67. Drawing the Commission's attention to the situation of journalists in certain countries, IFJ called in particular for the repeal of censorship laws that prevented journalists from doing their work in Albania, Algeria and Turkey; for investigations into attacks against journalists and the murder of journalists like José Luis Cabezas in Argentina; and for the release of all journalists currently imprisoned in Ethiopia, Indonesia, Peru and Turkey, in particular of William Ojeda in Venezuela. In the specific case of Turkey, journalists must no longer be tried in State security courts but rather in accordance with fair-trial standards, and those accused of murdering Metin Doktepe while he was in custody should be rapidly brought to justice.

68. It was up to the members of the Commission, individually and as representatives of the international community, to ensure that there were no more attacks against journalists, who simply wanted to exercise their right to think freely and to provide information.

69. Mr. KARANWI (International Association of Educators for World Peace) said that his organization was greatly concerned that, as emerged from the reports of the Special Rapporteur on torture and the Working Group on Arbitrary Detention (E/CN.4/1997/7 and 4, respectively), States parties to international human rights instruments still used torture as a means of obtaining information or punishing those whom they regarded as political opponents.

70. The Special Rapporteur on torture referred specifically to Nigeria, where the use of torture and other forms of ill-treatment of political prisoners was widespread. Among the political detainees were 19 members of the advocacy group Movement for the Survival of the Ogoni People, who had been held without trial in appalling conditions since June 1994. Nine other members of the Movement, including the writer Ken Saro-Wiwa, had been executed in 1995 after a trial characterized (in document A/50/960) as illegal, lacking due process and unfair by the fact-finding mission sent by the Secretary-General to Nigeria in April 1996. There was also the case of Baribor Bera, tortured atrociously by members of the security forces before being hanged on 10 November 1995. The situation in Nigeria had also been denounced by the Human Rights Committee in its 1996 report (A/51/40).

71. In the Republic of Korea, the authorities invoked the National Security Act on the slightest pretext in order to harass and detain opponents of unification, whom they labelled subversive elements. Several students, including Kim Man Soo, Jung Jae Hoon and Hong Sae Hee, arrested when the university campus had been stormed by security forces in August 1996, had been maltreated and tortured by the police. Political prisoners, of whom there were at least 26, were being detained in inhuman conditions.

72. Prison deaths due to torture, other inhuman treatment or failure to provide medical treatment were common in Nigeria and India. Clement Tusina, for instance, an Ogoni who had been in detention since June 1994, had died from an untreated illness. In India, the authorities regularly alleged suicide as the explanation for deaths of detainees, exonerating the security forces of all responsibility. The Special Rapporteur on torture had, in his report (E/CN.4/1997/7/Add.1) singled out the cases of Nanak Chand, Babula Das and Balwinder Singh. Nigeria and India ought to ratify the Convention against Torture and invite the Special Rapporteur on torture to visit their countries.

73. The International Association appealed to the Commission to adopt a resolution mandating the Special Rapporteur on torture to investigate the whole issue of torture in Nigeria and India and the cases of prison deaths due to torture; to urge the Governments of Nigeria, the Republic of Korea and India to prosecute those who engaged in torture; and to adopt concrete measures to prohibit the practice of incommunicado detention by States parties to international instruments.

74. Ms. ASSAAD (International PEN) drew the Commission's attention to the tendency of governments to clamp down on freedom of expression in times of civil unrest, thus only exacerbating problems rather than solving them. A case in point was the Albanian Government, whose banning of the opposition newspaper Koha Jone appeared to have encouraged the current wave of attacks on opposition journalists. In Belarus as well, steps to control opposition

newspapers, by way of fines and other penalties for alleged tax evasion seemed to be thinly disguised attempts to stop the newspapers from reporting any criticism of the Government.

75. In Indonesia, local and foreign journalists reporting on protest demonstrations against the expulsion of the leader of the Indonesian Democratic Party and the sit-in at party headquarters had been attacked by the police and the army and their film had been seized. In Myanmar, Act No. 5/96 of June 1996 had introduced 20-year prison sentences for those who disturbed the "tranquillity of the State", meaning, in fact, those who criticized the Government, and Aung San Suu Kyi had been barred from giving interviews to the foreign media.

76. In Cameroon, in anticipation of elections scheduled for later in the year, the Government had imposed new restrictions on freedom of expression and many journalists were being arrested and tried for defamation and dissemination of false information. In Zambia, where elections were also to be held in the course of the year, journalists had faced intimidation tactics, and the State's monopoly on broadcasting remained unchallenged. In Zimbabwe, the freedom of the press had been seriously compromised in the period leading up to the 1996 election, and criminal charges had been brought against many journalists under the Official Secrets Act.

77. International PEN was grateful to the Special Rapporteur on freedom of expression for his contribution to the implementation of article 19 of the Universal Declaration of Human Rights, and recommended that he should continue to monitor all forms of censorship, and not merely those that threatened the physical safety of individuals.

78. Mr. COFFINIER (United Towns Agency for North-South Cooperation) said that the cruel, inhuman or degrading treatment to which some exploited or oppressed peoples had always been subjected was unacceptable. Yet on the verge of the twenty-first century, other equally unacceptable contemporary forms of inhuman treatment, which claimed thousands if not millions of victims, were also to be deplored. He was referring to the inhabitants of big-city slums, who were inhumanly maintained in a state of poverty, and to all the groups excluded from a nation's life, like the Gypsies in France, the Tuareg in Africa or the Puerto Ricans in New York. There were also the drug addicts, sometimes regarded as criminals and sometimes as the dregs of society, and condemned to psychological imprisonment. It was actually easier for those in power to acknowledge defeat than to seek a solution, for that would mean admitting their own mistakes.

79. His organization was convinced that such inhuman and degrading treatment, concealed by characterizing the people in question as marginalized, was even worse than physical torture, which it nonetheless condemned categorically. The Commission should focus on that social issue, for it might in future be used as a weapon by new oppressors, more subtle but more dangerous. To resolve the problem would be to contribute to social tranquillity and economic development.

80. Ms. GRAF (International League for the Rights and Liberation of Peoples), referring to the conflict in the Basque country of Spain, said that

the arrest and imprisonment in February 1997 of 18 political leaders of the Basque party Herri Batusuna for collaboration with armed bands - a charge based solely on the distribution of a video cassette during the March 1996 electoral campaign - represented an infringement of a basic right recognized in several international instruments, namely, the freedom of opinion and expression. Since a multi-party system was an essential element of democracy, those events were extremely serious because they had occurred in Spain, one of the Western European democracies. She wondered how a dialogue leading to a peaceful settlement of the conflict in the Basque country, which had claimed so many lives, could take place if those who had to take part in it as representatives democratically elected by the Basque people were in prison.

81. With regard to the armed conflict in Sri Lanka, it was regrettable that, despite the commitments made by the Government when it had taken power in August 1994 and legal safeguards to prevent torture, arbitrary detention or disappearances, such practices had not stopped. Members of the security forces continued to use various methods to torture and mistreat detainees, particularly during interrogation; many deaths as a result of torture had been reported in the Tamil areas occupied by the Sri Lankan army. In addition, over 300 disappearances after arrest had been reported during the second half of 1996. Despite the Government's assurances to international bodies, there was no indication that it had taken effective measures to end the impunity enjoyed for a number of years by members of its security forces. On the contrary, the heavy press restrictions imposed had had the effect both of concealing and encouraging arbitrary detentions, torture and gross violations of international humanitarian and human rights law.

82. It was unfortunate that Sri Lanka had rejected offers of mediation and insisted on treating the conflict as an internal matter, for it would probably be impossible to bring the civil war and human rights violations to an end without external mediation. The League appealed to the members of the Commission to act with urgency to end the genocidal situation now existing in Sri Lanka.

The meeting rose at 1 p.m.

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Fifty-third session

SUMMARY RECORD OF THE 29th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 27 March 1997, at 3 p.m.

Chairman: Mr. SOMOL (Czech Republic)

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GE.97-11503 (E)

The meeting was called to order at 3.05 p.m.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

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(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(agenda item 8) (continued) (E/CN.4/1997/4 and Add.1-2 and Corr.1 and Add.3, 7 and Add.1-3 and Corr.1, 25 and Add.1, 26, 27 and Add.1, 28, 29 and Add.1, 30, 31 and Add.1, 32-34, 55 and Corr.1, 103 and 104; E/CN.4/1997/NGO/3, 4, 7, 8, 20, 22, 23 and 29; E/CN.4/Sub.2/1996/16, 17, 19 and Corr.1 and Add.1; A/51/465 and 561)

1. Ms. JOICE (International Progress Organization) said that, in countries where levels of education and awareness were low, people in detention were more likely to be mistreated. Detainees were often tortured to extract confessions so that police officers could prove that they were solving crimes. The fault lay with a system lacking adequate investigative resources and an efficient judicial system. Overcrowding in prisons, slow judicial processes and corruption encouraged violation of the human rights of detainees. In many developing countries, people were detained without trial for periods longer than those to which they would have been sentenced had they been convicted.

2. While torture and abuse of human rights by State authorities were identifiable and often punishable, there were also invisible forms of torture, detention and imprisonment which were determined by cultural values. Depriving women of the right to choose their spouses and forcing them to spend their lives with men they loathed was far more traumatic than imprisonment.

3. The imprisonment of the mind, particularly in the case of children, was the worst kind of torture since it warped the victims' personalities and gave birth to a nation of adults with distorted values. Education was intended to liberate, not to imprison but in some schools in Pakistan, for instance, children were kept chained and deprived of any modern learning. Torture inflicted with instruments left scars that could be healed; the shattering of the mind and soul was silent and far more painful.

4. The international community must set standards for the improvement of prison facilities, inspections by an enlightened judiciary and establishment of a legal structure that treated all individuals equally without regard to gender or religion. Societies in which detention and torture were a function of social and religious norms should be encouraged to adopt new practices that protected the rights of their weaker and more vulnerable members. Lastly, the

international community must censure detention and torture practised by terrorist groups and, more importantly, the States which provided such groups with a haven from which to operate.

5. Mr. FERNANDEZ (Franciscans International) said that arbitrary detention persisted in many countries, particularly where individuals had merely sought to exercise the rights proclaimed in the International Bill of Human Rights. In many cases, states of emergency had given rise to legislation violating international human rights standards, as exemplified by the anti-terrorist legislation in Colombia and Peru, where individuals had been arrested and tried for terrorism after engaging in peaceful protest or exercising their right to strike or to engage in political opposition.

6. The use of anonymous witnesses and "faceless judges", violated the right to due process. Human rights leaders in Colombia had been subjected to lengthy preventive detention under conditions that violated the Standard Minimum Rules for the Treatment of Prisoners; in some cases, the courts had eventually dropped charges against them without providing compensation.

7. The Commission should extend the mandate of the Working Group on Arbitrary Detention and publish the report of the visit by the Special Rapporteur on the independence of judges and lawyers to Colombia in September 1996.

8. Ms. BECKERS (African Commission of Health and Human Rights Promoters) said that the General Assembly had declared that the mass killings committed in Rwanda between April and June 1994 constituted genocide, and all Governments must fulfil their international responsibility to prosecute those suspected of that most heinous crime. The most recent report of the Special Rapporteur on the situation of human rights in Rwanda (E/CN.4/1997/61 and Add.1) recommended the establishment of a fund to assist the victims of that genocide, yet the international community appeared to have forgotten the survivors or chosen to ignore them. The Government of Rwanda was working with United Nations agencies to reconstruct the country, but no specific programme targeted the survivors and victims of the war, who required medical, psychological and social assistance, housing, education, justice and reparation.

9. Ms. WEI Shanshan (Transnational Radical Party) said that there were situations in which the exercise of the right to freedom of expression and association led to arbitrary detention, the Republic of Korea and China being cases in point. Her own brother, Wei Jingsheng, was a political prisoner in China who had been subjected to incommunicado detention and convicted of conspiracy to subvert the Government for offences such as publishing anti-government articles abroad, raising money for victims of political persecution and their families and criticizing violations of human rights in Tibet and Qinghai. He was currently serving a 14-year sentence, his health was deteriorating steadily, and all those who had appealed to the Chinese authorities on his behalf had themselves been detained.

10. Many dissidents were sentenced to re-education through labour, which had been judged inherently arbitrary by the United Nations Working Group on Arbitrary Detention in 1993, without benefit of counsel or a fair trial. The Chinese authorities always asserted that there were no political prisoners in China, referring to them as counter-revolutionaries.

11. The Working Group on Arbitrary Detention and the Special Rapporteur on freedom of opinion and expression must continue their investigations into China and other countries with similar practices. The Commission should call upon all such Governments to give a clear definition of the term "endangering State security" and to release all those who had been victimized through abuse of that term and should denounce Governments which used the legal system as a tool of oppression.

12. Mr. HOLST (Denmark), having endorsed the statement by the representative of the Netherlands on behalf of the European Union, said he wished to draw the Commission's attention to the urgent need for action to ensure effective implementation of the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment, which the General Assembly had established in its resolution 37/194. Those principles were designed to ensure that the medical treatment of prisoners was of the same standard as that of non-prisoners, and that health-care personnel dealing with prisoners did not participate in practices that involved torture or other cruel, inhuman or degrading treatment but unfortunately, 15 years after the adoption of that resolution, there were many examples of individual health professionals acting contrary to the Principles.

13. Physicians had been directly involved in torture or surgical mutilation while other areas of concern were the removal of organs for transplant from prisoners condemned to death, the practice of classifying violent death in detention as being due to natural causes, and the certification of prisoners as fit to be treated or punished in a cruel, inhuman or degrading way. Moreover, it could be assumed that the majority of such practices went unreported. One of the main causes of that regrettable situation was that many health-care professionals were afraid of reprisals, against themselves or their families.

14. There were very few cases of sanctions being applied, even for what the General Assembly had called a gross contravention of medical ethics and such sanctions were more likely to be applied by professional associations than by public authorities. The World Medical Association had called on all its national associations to support their members who stood up for established principles of medical ethics and to sanction those found guilty of involvement in torture. However, that was often difficult for them to do, especially in countries ruled by repressive regimes that practised or tolerated torture. Even after the fall of repressive regimes, legislation all too often afforded impunity to the perpetrators of human rights violations.

15. By adopting the Principles of Medical Ethics, the General Assembly had enlisted the help of health professionals to protect the human rights of prisoners and detainees, but had failed to offer those professionals

protection when they refused to participate in inhuman practices and had also failed to stress the duty of public authorities to respect their refusal. Moreover, it had not explicitly stated that the right to medical confidentiality must also be maintained in the case of prisoners. He therefore invited the Commission and the High Commissioner for Human Rights to seek ways to ensure, through legislation and administrative practice, full respect for Principles, and to involve health professionals in those endeavours as part of a more proactive United Nations human rights policy.

16. Mr. ESPINOLA SALGADO (Brazil) said that agenda item 8, which concerned human rights violations common to both developed and developing countries, lent itself less than other agenda items to charges of politicization and selectivity and concerned a field in which international cooperation had a major role to play.

17. His Government appreciated the objectivity and fairness with which the Special Rapporteur on questions relevant to torture, was carrying out his duties. It endorsed the Special Rapporteur's view that his mandate included authorization to consider cases of corporal punishment resulting from legal provisions or executive decrees and that article 1 of the Convention against Torture should not be interpreted as condoning such practices.

18. It considered that the initiative of an optional protocol to the Convention against Torture establishing a mechanism for visits to places of detention was an important step, on the understanding that States would give their consent to such visits by ratifying or adhering to the protocol and that subsequent consultations should concern only the modalities of individual visits.

19. While the Working Group on Arbitrary Detention had contributed to a solution in many cases, his delegation shared the concern expressed by other delegations with regard to the way in which the Working Group's mandate was being interpreted. The Working Group must be allowed a certain flexibility, but it was neither a supranational jurisdiction nor a treaty body, and he hoped that, in the future, it would avoid the use of language that might be misinterpreted.

20. The Brazilian National Congress had passed an act recognizing as dead the persons who had disappeared in connection with political activities during the period 1961-1979. The act contained a list of persons whose deaths were officially recognized, provided for the inclusion of others in that list and authorized compensation calculated on the basis of the victims' expected lifetime at the moment of disappearance. As a result of action under that act, the Working Group on Enforced of Involuntary Disappearances had declared clarified the majority of the outstanding cases of disappearance in Brazil.

21. A bill currently under consideration by Congress would, if approved, criminalize torture and establish a minimum penalty of two years' imprisonment for that offence and 8 to 16 years in cases where death had resulted therefrom.

22. With regard to conditions of detention, in addition to the establishment of a National Penitentiary Fund and redefinition of Government policy, the National Human Rights Programme was considering reactivation of the penal computerized system (INFORPEN) in order to speed up trials and avoid continued imprisonment after sentences had been served, supporting emergency programmes aimed at correcting errors in the prison system and improving conditions of detention, encouraging implementation of the Penal Executions Law with regard to open and half-open prison regimes, and building new penal establishments.

23. Mr. RINCHHEN (Bhutan) said that his country had been first to invite the Working Group on Arbitrary Detention to consider the case of an individual in situ. The Working Group had declared the case not arbitrary and at the request of his Government, had subsequently paid a follow-up visit to assess the implementation of its recommendations on various areas of the justice system. Its satisfaction with the Government's actions was expressed in its reports (E/CN.4/1997/4/Add.1 and 3).

24. His Government was grateful to the Working Group for its valuable advice and objectivity, as well as its sensitivity to the cultural traditions that invariably played a role in forming the jurisprudence of a society. Its only complaint was that the Working Group referred to the people in the refugee camps in Nepal as Bhutanese, although their nationality was the subject of discussion between the Governments of Nepal and Bhutan. Substantive progress had been made and Bhutan remained committed to working closely with Nepal to resolve the humanitarian problem of the people concerned.

25. His Government was committed to enhancing the enjoyment of human rights by all sections of its people. That was why it had invited the Working Group, had undertaken a technical cooperation project with the Centre for Human Rights and maintained a close relationship with the International Committee of the Red Cross (ICRC), which advised on improvements to the penitentiary system. Cooperation and constructive dialogue between Governments and the Working Group were crucial for achieving the desired results.

26. Ms. SCHIEFERMAIR (Austria), having endorsed the statement by the representative of the Netherlands on behalf of the European Union, said that, in many States, children and juveniles were deprived of their liberty without due process and for indeterminate periods of time, often being held in abysmal physical conditions. Children, often with weak family ties or none, were vulnerable to exploitation, being used for drug smuggling or other criminal activities, and thus came into conflict with the law. Despite the array of international standards concerned with juvenile justice, practical measures for greater international cooperation were needed to ensure that such standards were implemented at the national level.

27. In that connection, her Government had taken the initiative, in cooperation with the United Nations High Commissioner for Human Rights, the United Nations Children's Fund (UNICEF) and the United Nations Crime Prevention and Criminal Justice Division, of organizing an international meeting in February 1997, attended by 30 experts from around the world and representatives of United Nations bodies. A programme of action had been elaborated to promote the effective use and application of international standards in juvenile justice.

28. Under the programme of action, it was proposed to establish a coordination panel on technical advice and assistance in juvenile justice, consisting of representatives of the Committee on the Rights of the Child, the United Nations High Commissioner for Human Rights, the Crime Prevention and Criminal Justice Programme, UNICEF, the United Nations Development Programme (UNDP) and other United Nations agencies, as well as of intergovernmental, regional and non-governmental organizations (NGOs) involved in the field of juvenile justice. Governments would benefit from project proposals and assessment for the improvement of their juvenile justice systems. Such a pooling of resources was clearly in line with the overall thrust of the reform of the United Nations system.

29. The programme of action would be submitted to the Commission on Crime Prevention and Criminal Justice in April-May 1997, and would, it was hoped, form a basis for the effective implementation of international standards at the national level. Her delegation also intended to propose that the resolution on human rights in the administration of justice should become a biennial one.

30. Mr. KUEHL (United States of America) said that torture insulted the values that every member of the Commission was pledged to keep; it degraded the torturer and the tortured alike. Yet Governments - some of them members of the Commission - looked the other way while their policemen and soldiers engaged in torture. Human rights set standards by which nations judged each other; if a nation's standing fell, it was its own doing. It was because it jailed its journalists and dissidents. Such people should be released. Their public criticism might be unpalatable, but the country would be the stronger for it in the end.

31. For one reason or another, Governments that tortured their own people were often not named in the Commission, but the world knew which Governments were guilty. No one felt sorry for such Governments, whining in self-pity, when they persisted in their torture and sham trials, trying to ignore the media and the human rights organizations brought into being by their own practices.

32. The United Nations Voluntary Fund for Victims of Torture was one of the most effective programmes sponsored by the Centre for Human Rights. His Government was proud to have contributed $1.5 million to the Fund in the current year and hoped that others would contribute also. It supported the efforts of the Special Rapporteur on questions relevant to torture and called on all members of the Commission to cooperate with him and heed his reports. It also supported the work of the Working Group on Arbitrary Detention and would strongly oppose any effort to weaken or narrow its mandate.

33. Countries that had not yet done so should ratify and accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The United States respected the decision of the expert member of the Working Group on Enforced or Involuntary Disappearances, Mr. Manfred Nowak, to resign his mandate regarding the special process on missing persons in the territory of the former Yugoslavia and appreciated the

dedicated efforts he had made. Lastly, he pointed out that no unusual resources or any special level of development were needed to stop torture. All that was needed was the simple will to do so.

34. Mrs. DIALLO (Observer for Senegal) said that the right not to be tortured was the sine qua non of respect for the individual. NGOs gave a voice to those suffering torture, ill-treatment, arbitrary imprisonment and the violation of their human dignity, but more than words were needed: it was time to put a stop to torture, in all its hidden forms and at every level, wherever it was found.

35. Her Government had concentrated on two aspects of the struggle against torture: prevention through education and dialogue, and rigorous implementation of the Convention, paying particular attention to the recommendations of the Committee against Torture whenever Senegal submitted a report. Dialogue was conducted by means of the Senegalese Human Rights Committee, within which NGOs could freely express their views and draw the attention of the authorities to any human rights violation. All members of the Committee had the common objective of achieving the effective implementation of the international human rights treaties. An interministerial committee had also been established to examine any allegations of violation of human rights.

36. Her Government was convinced that a State should not react to allegations of human rights violations as a slight to itself, but should seek at all times to address such allegations calmly. The interministerial committee provided a permanent focus for such concerns within the Senegalese Government.

37. Senegal had put much effort into educating judges and the police force. It proposed to extend that process, in particular the need to protect the physical and moral integrity of the individual, to the armed forces and to the medical corps, and especially to forensic pathologists. The implementation of the recommendations of the Committee against Torture was no longer the domain solely of the Ministry of Justice but also of many other ministries. All worked for the adaptation of Senegalese legislation to the provisions of international treaties.

38. While the Constitution provided that any international treaty that had been ratified could be invoked in the courts, an act had been passed specifically outlawing acts of torture. Results of inquiries into allegations of torture would be notified to the Committee against Torture. Being convinced that it was the prime responsibility of Governments to give effect to the Convention in their legislation and judicial procedures, Senegal would continue to do all in its power to remain a State subject to the rule of law.

39. Mr. WILLE (Observer for Norway) said that the rule of law, which required an equal distribution of power between the executive, the legislative and the judiciary, was an indispensable precondition for the effective protection of human rights. A fair, impartial and predictable application of all laws at all levels was fundamental to a democratic State. Agenda item 8

went to the heart of that principle and his delegation applauded the work of the special rapporteurs who had enhanced public knowledge in their fields. Sufficient resources should be allocated to enable them to fulfil their various mandates.

40. In recent years, a large number of countries had taken important steps towards democracy, often as a result of long-lasting dialogue at both the national and international levels. Multilateral forums were of paramount importance in the effort to promote human rights, to apply pressure and to build consensus. In its bilateral contacts with other countries, Norway's principal approach was to establish dialogue and to offer incentives.

41. It provided substantial support for Governments and NGOs that worked to strengthen respect for human rights through educational projects, the dissemination of information and the training of lawyers and judges. A considerable number of human rights experts, lawyers and investigators had been sent to problem areas. There had also been fruitful dialogue on matters such as the rule of law. A recent high-level meeting of Chinese and Norwegian legal experts and politicians had been useful.

42. Another aspect of the rule of law was how it was applied internationally, but there were very few mechanisms to implement international law effectively. His Government therefore strongly supported the speedy establishment of a permanent criminal court within the United Nations system. It was particularly important that grave breaches of humanitarian law, such as genocide and serious war crimes, should be subject to the jurisdiction of such a court; it was crucial that individual perpetrators should be punished in order to avoid the concept of collective guilt, which often led to ethnic hatred.

43. Lastly, he expressed his delegation's appreciation of the essential work undertaken by NGOs and human rights defenders throughout the world; their active participation in the work of the Commission was most welcome.

44. Mr. VIGNY (Observer for Switzerland) said that any consideration of the deplorable phenomenon of forced or involuntary disappearances had to recognize that a shocking 43,980 cases, each representing untold suffering and despair, remained unresolved. More than a third of such cases related to Iraq, which had not even replied to a request for a visit by the Working Group. His Government also urged India and Turkey to review their stance and to cooperate with the Working Group. It congratulated those States which had taken the step of receiving the Group. It was essential for the families of victims, that outstanding cases should be resolved. There had been 551 new cases in 28 countries in 1996 which showed that, despite the progress in some countries, the Declaration on the Protection of All Persons from Enforced Disappearance was far from having achieved its aims.

45. Arbitrary detention was a violation of much the same rights as those involved in forced disappearances, and whether it came about through the actions of the executive authority or the judicial process was immaterial. His delegation therefore strongly supported the view that to make a distinction between "detention" and "imprisonment" in the Working Group's mandate was inappropriate. The mandate should apply to all arbitrary

deprivation of freedom, whether pre-trial or post-trial. The States which practised arbitrary detention the most were precisely those which wished to limit the Working Group's mandate to pre-trial detention. He urged the Commission to renew that mandate unchanged.

46. In the case of torture, too, semantics should not be allowed to weaken human rights protection. As the Special Rapporteur on questions relevant to torture had argued, there should be an end to such punishments as flogging, stoning, amputation, branding and tattooing, despite the religious objections invoked by a small number of Governments.

47. His delegation congratulated those Governments which had cooperated with the Working Group in 1996 and appealed to Cameroon, China, India, Indonesia, Kenya and Turkey to follow suit.

48. Lastly, he urged that the draft optional protocol to the Convention be adopted with all possible speed. The Working Group had begun the second reading in 1996, but progress was still too slow and it was most regrettable that the Working Group had not been granted a double session in 1997.

49. Ms. GORDON-LENNOX (International Peace Bureau) said that the Committee of Soldiers' Mothers of Russia received over 10,000 complaints every year about physical or mental torture of conscripts. The soldiers were often afraid to report cases of such treatment for fear of even greater harassment and humiliation, because it was their officers who had subjected them to the treatment or because the violations were so cruel or shameful that they were psychologically unable to talk about them. The insanitary living conditions in military barracks were themselves inhuman, medical treatment was often refused to victims of torture, and the suicide rate in the military was rising.

50. The Commission should call on the Russian Federation to strengthen the provisions of the new criminal code on torture, request the Committee against Torture to reflect in its annual report such violations of the Convention by the Russian Federation and send a delegation to investigate reported cases of torture among conscripts in the Russian armed forces.

51. Mr. LAHCEN (International Association of Democratic Lawyers) said that Moroccan security forces were still committing grave violations of human rights in Western Sahara. People were imprisoned without due trial for expressing their opinions, the use of prolonged detention in secret centres was widespread, and detainees were systematically tortured. The 1991 release of 300 prisoners from secret centres had raised hopes of an improvement in the situation but it had, in fact, worsened. Those released had been subjected to constant intimidation and threats and hundreds of other people had disappeared. He gave the example of the case of Mohamed Daddach who although his sentence had been commuted to life imprisonment in 1994, continued to be held on death row in Kénitra prison.

52. An independent commission of inquiry should be set up to look into the situation of arbitrary detention and enforced disappearances in Western Sahara.

53. Ms. VALIÑA (Centre for Justice and International Law) said that human rights and the system for protecting them were designed to combat the arbitrary exercise of power and international standards applied to all forms of deprivation of liberty, particularly detention and imprisonment. Those terms were not always used precisely; in recent years, the term "detention" had been used generically to mean any deprivation of liberty. Article 9 of the International Covenant on Civil and Political Rights protected both detainees and prisoners. The Working Group on Arbitrary Detention had thus to take account of all possible forms of arbitrary deprivation of liberty. Its mandate should be renewed and interpreted as broadly as possible.

54. The draft basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law (E/CN.4/Sub.2/1996/17) should be adopted as soon as possible. They covered a variety of situations, envisaged different types of reparation, both monetary and symbolic and gave a fuller description of the right to reparation previously mentioned in various international instruments.

55. Her organization also supported the work of the Special Rapporteur on questions relevant to torture. She hoped that the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment would be speedily completed and adopted.

56. Mr. WAREHAM (International Association against Torture) said that the media attention focused on the audacious action of the Tupac Amaru Revolutionary Movement (MRTA) in Peru had missed the key point that political prisoners in Peru endured inhumane prison conditions. No progress had been made in correcting those conditions, especially since the Government had passed its anti-terrorism law.

57. In the United States of America, the enactment of more draconian legislation had increased the number of prisoners and worsened prison conditions, particularly for political prisoners and prisoners of war. Members of minority groups who fought for human rights were incarcerated as political prisoners. The United States Supreme Court had undermined constitutional guarantees by allowing police to use prior traffic violations as an excuse to stop drivers when they lacked evidence of criminal activity. Blacks and Hispanics, who constituted the majority of the prison population, were clearly targeted by that policy. Members of those two groups were also subject to summary and arbitrary executions by police officers, who were rarely prosecuted.

58. Also of concern was the counter-terrorism legislation passed in 1996, which limited the number of legal appeals for death-row prisoners and required the detention and deportation of non-citizens (including lawful permanent residents) who had been convicted of any crime, however minor.

59. Mr. TEITELBAUM (American Association of Jurists) said, with respect to the information on Argentina provided in the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1997/34, paras. 51-58), that a group of grandmothers of children who had disappeared had filed a criminal complaint against members of the armed forces in December 1996. However, only the Public Prosecutor could decide whether to act on the complaints lodged and

was therefore able to obstruct criminal proceedings. Argentine penal procedure thus departed from the international human rights instruments which guaranteed the right to an effective remedy for acts violating fundamental rights.

60. As indicated in the report of the Special Rapporteur on the independence of judges and lawyers (E/CN.4/1997/32, para. 153), the Peruvian Government had not deigned to answer inquiries about the lawyer Margarita Chuquiuru Silva, who had been sentenced, without evidence, to 20 years' imprisonment for alleged links with terrorist groups. In Peru, lawyers were imprisoned for representing those accused of terrorism before the courts, in compliance with their professional duty in the cause of justice, such as Saavedra Marreros, who had been sentenced to 10 years' imprisonment by a military tribunal. The Working Group on Arbitrary Detention should reexamine the case of Saavedra Marreros.

61. The World Bank's programmes on the judiciary, mentioned in paragraph 22 of the report of the Special Rapporteur on the independence of judges and lawyers, completely disregarded human rights issues and undermined the independence and impartiality of the judiciary since their acknowledged aim was to train judicial personnel who were ideologically committed to the market economy and free enterprise.

62. The Special Rapporteur on freedom of opinion and expression should analyse how that right was seriously undermined by the monopoly of the mass media by conglomerates in the information, electronics, tobacco and weapons industries. The Working Group on Arbitrary Detention should visit the United States to investigate the situation of the thousands of imprisoned illegal immigrants who awaited deportation, sometimes for years.

63. Mr. BAH (International Federation of Human Rights Leagues) said that the mandate of the Working Group on Arbitrary Detention should be renewed unchanged, even though it had wrongly decided to suspend consideration of communications relating to China pending a visit to that country. The term "arbitrary" was the key element of that mandate, which should cover cases of both pre-trial and post-trial detention.

64. The rights to freedom of opinion and expression, association and circulation, due process and physical integrity were being persistently violated in Tunisia, with complete impunity. A great many political prisoners were victims of torture or of cruel, inhuman or degrading treatment. The actions of human rights defenders, who were kept under close surveillance were systematically hampered. The Tunisian authorities must be urged to respect the international instruments they had ratified and the recommendations of the Human Rights Committee, and the Commission should condemn their human rights violations.

65. Each year, the Committee of Soldiers' Mothers of Russia received thousands of complaints alleging that young conscripts in the Russian Federation suffered from physical and psychological torture by officers and veteran soldiers. Investigations were compromised by the fact that they were

conducted by the officers themselves. The Russian Federation was a party to the Convention against Torture and the Russian Government should implement the recommendations addressed to it by the Committee against Torture.

66. His organization was concerned about the retention of emergency legislation in Northern Ireland which imposed severe restrictions and about the pressures, including death threats, which the police brought to bear on lawyers.

67. Mrs. de SORIA (Commission of the Churches on International Affairs of the World Council of Churches) said that a report prepared by the Secretary-General pursuant to a Commission resolution referred specifically to the case of her husband, a Spanish national who had been murdered by the Chilean Directorate of National Intelligence (DINA) during the dictatorship of General Pinochet, and indicated that the Chilean Government was to inform the Secretary-General of the outcome of the case for subsequent transmission to Member States.

68. At the time of his death in July 1976, Carmelo Soria had been employed as an international civil servant by the United Nations Economic Commission for Latin America and the Caribbean (ECLAC). The DINA personnel responsible for kidnapping, torturing and killing him had been identified in 1992. Since then, the Supreme Court had upheld (most recently in August 1996) the military court's ruling that the perpetrators were covered by the Chilean Amnesty Act of 1978, on the grounds that Mr. Soria's employment status had not qualified him for protection under the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, despite the fact that ECLAC had certified in 1994 that Mr. Soria had been an international civil servant.

69. The Secretary-General had made a statement concerning the case in December 1994 and, following the latest Supreme Court ruling, ECLAC had issued a statement referring specifically to the 1973 Convention.

70. Ms. SALERNO (Centre Europe-Tiers Monde) said that the human rights situation in Turkey continued to be alarming: numerous associations, newspapers and magazines had been banned, hundreds of journalists had been fined or imprisoned, and 179 people had been summarily executed or had died in detention. Torture was systematically practised by the police in Turkey. She gave the example of 16 young students who had been given extremely harsh jail sentences for belonging to illegal organizations, despite the fact that the trial of the policemen accused of torturing them had not yet ended. It was clear, therefore, that the Turkish courts took no account of the circumstances in which confessions were extracted.

71. The Turkish authorities obviously did not have the political will to adopt the necessary legislative and administrative measures to pursue human rights violators. Turkey was not a party to either of the International Covenants on Human Rights. The appointment of a Minister for Human Rights in 1991 had proved ineffective, as had calls by the then Prime Minister, for the removal of instruments of torture from police stations and the recommendations of the Committee against Torture in 1993 had still not been followed up.

72. She therefore called upon the Commission to adopt a resolution whereby the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on questions relevant to torture and the Special Rapporteur on the independence of judges and lawyers would investigate the situation in Turkey.

73. Mr. CHOUDRY (International Human Rights Association of American Minorities) said that the investigative role of the Working Group on Arbitrary Detention was particularly significant in relation to countries like India, whose record in Jammu and Kashmir was abysmal. He urged the Working Group to investigate all the cases specified in the writ of habeas corpus lodged with the High Court of Jammu and Kashmir, copies of which were available to the members of the Commission.

74. The Special Rapporteur on questions relevant to torture, continued to receive information indicating that the Indian Armed Forces in Jammu and Kashmir were systematically torturing detainees to extract information and confessions. One of the latest victims was Ghulam Rasool Dar, who had addressed the Commission at its fifty-second session. He had been hospitalized following a severe beating by members of the Border Security Force, who had also reportedly beaten his wife and sons.

The meeting rose at 5.20 p.m.